

**Local 9431, Communications Workers of America,
AFL-CIO (Pacific Bell) and J. Rodman Stoker.**
Case 20-CB-7925

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

The sole issue before us¹ is whether the Respondent Union is to be held responsible, and thus in violation of Section 8(b)(1)(A) of the Act, for threats made by shop stewards Rodney Hamilton and David Roldan against certain members of the Union's executive board who constituted a dissident faction opposed to the administration of Union President Cliff Bryant.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.²

The judge found that the threats of serious bodily harm would constitute unfair labor practices if the stewards were agents of the Union acting on its behalf with authority to make such threats. In that vein, he further found (1) that there was no evidence that Bryant had expressly authorized the stewards to make unlawful threats and (2) that threatening violent retaliation against the dissident board members was not within the scope of the limited agency powers conferred on Hamilton and Roldan by virtue of their status as stewards.³

We agree with the judge's factual findings but not with his characterization of certain elements of agency law.⁴ Our agreement is thus limited to a finding of no

actual authority. The judge, however, went on to find that another ground for not attributing Hamilton's and Roldan's threats to the Union was that Bryant had repudiated those threats uttered in his presence. For the reasons set forth below, we agree in part with the General Counsel's limited exceptions and find, under the doctrine of implied apparent authority, that Bryant's relatively mild responses were insufficient to constitute an effective repudiation or disavowal of the serious threats of violence made by the stewards against those union officers who opposed Bryant and sought to remove him from office.

The allegation before us must be evaluated in the context of other unfair labor practices which the judge found and to which no exceptions were filed. As fully set forth by the judge, the Union, through Bryant, its president and agent, violated Section 8(b)(1)(A) by (1) threatening, on three occasions in December 1988 and March 1989, to take adverse actions against four executive board members because they were opposing his policies and sponsoring a recall drive to remove him from office;⁵ (2) issuing, on March 21, 1989, a directive which affected only those board members who opposed him and, for the first time, required advance approval from Bryant before they could take time off from their jobs to participate in union activities; and (3) on April 18, 1989, withdrawing and refusing to process a contractual grievance filed against Pacific Bell by one of the dissident board members.

We come now to the circumstances surrounding the Hamilton and Roldan threats made against the dissident union officials concurrently with Bryant's unfair labor practices, summarized above. First, on March 20, 1989, during an executive board meeting open to the Union's general membership, Watkins, Gilbert, and Stoker accused Bryant of certain financial and sexual improprieties and proposed that he resign. Bryant denied that he had acted improperly in any way. Several union members spoke in support of Bryant. Hamilton, in particular, said, referring to the dissident board members, that he was tired of these "assholes" trying to disrupt the Union and that "there must be ways to take care of these guys once and for all." Bryant responded by asking Hamilton to control his language. After the meeting, Hamilton approached Gilbert privately and told him that he was in trouble if he did not provide Hamilton with some previously requested information. When Gilbert responded that he did not

¹ On August 29, 1990, Administrative Law Judge George Christensen issued the attached decision. The General Counsel filed limited exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² With respect to the Respondent's unlawful refusal to process Stoker's grievance, we note that Stoker suffered no monetary loss as a result of the Employer's action that prompted the grievance. In these circumstances, there is no warrant for a provisional make-whole remedy. Hence, the special procedures of *Mack-Wayne II*, 290 NLRB 817 (1988), do not apply. However, the remedial provisions of *Mack-Wayne I*, 279 NLRB 1074 (1986), shall apply, except for the provisions regarding a provisional make-whole remedy.

Member Cracraft adheres to her dissent in *Mack-Wayne II* but agrees with her colleagues that, in any event, the backpay procedures as set forth in the majority's opinion in that case would not apply here.

³ It is undisputed that their authority was limited to signing up new members, acting as information conduits between employees and the Union, counseling employees on grievance filing, and generally policing the collective-bargaining agreement between the Union and Pacific Bell.

⁴ The judge treated "implied" authority as a category of authority coequal with those of "actual" and "apparent" authority, rather than as a way in which authority may be created. According to the Restatement 2d, *Agency*, § 7, actual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him. That manifestation may be either express or implied. Apparent authority, on the other hand, results from a manifestation by a principal to a third party that another is his agent. Under this concept, an individual will be held responsible for actions of his agent when he knows or "should know" that his conduct in relation to the agent is likely to cause third parties to believe that the agent

has authority to act for him. Restatement 2d, *Agency*, § 27. As with actual authority, apparent authority can be created either expressly or, as in this case, by implication.

In this case, there was no empowering direction to threaten violence from Bryant to the stewards which was either express or which could be implied from the limited scope of the actual authority conferred on the stewards to perform union duties. The stewards therefore did not have actual authority. However, for the reasons discussed *infra*, they had implied apparent authority.

⁵ The dissident board members were Vice President Michael Watkins and Area Directors Glenn Dadisman, Donald Gilbert, and J. Rodman Stoker.

know what Hamilton was talking about, Hamilton bumped him, called him an “asshole” and told him to “watch his back.”

On March 30, 1989, a stewards’ meeting was held during which a representative of the International explained the constitutional provisions relating to recall of local union officials. Bryant had left the room after opening the meeting, but Watkins, Gilbert, and Stoker refused his request to leave with him and remained. At one point Roldan asked why they had to go through this discussion. Hamilton then stated that the dissension could be settled fast by bringing in a couple of guys to do away with the “troublemakers,” referring to Watkins, Gilbert, and Stoker.

On April 7, 1989, Bryant, Gilbert, and Roldan were together just before a grievance meeting with Pacific Bell representatives. Bryant showed Roldan some documents that Gilbert and the others were using against him. Roldan glanced at them and said that they were “crap, lies and bullshit.” Roldan further said, looking at Gilbert, “Why can’t we just hire assassins, CWA must have some we can hire to take care of these guys, it will probably cost \$50 or maybe we can get a volunteer and get it done free.” Bryant told Roldan not to talk like that, and then the grievance meeting began.

On April 18, 1989, during a regular general membership meeting, Hamilton, with Bryant’s assistance, made a duly seconded motion directing Bryant to withdraw Stoker’s grievance against Pacific Bell.⁶ During the meeting Gilbert said that threatening the lives of union officials because of political disagreement was no way to run a union. Hamilton responded by saying, “Let’s get a rope and hang these guys.” Bryant then said that he would eject Hamilton from the meeting unless he curtailed his language.

The judge, in finding that the Hamilton-Roldan threats were not attributable to the Union, found no evidence to establish that the Union “instigated, authorized, solicited, ratified, condoned or adopted” the threats in question. Rather, the judge found that the threats were “spontaneous outbursts” by two “fervent” supporters and that, when present, Bryant told Hamilton and Roldan to stop making threats against the union dissidents.

We find, however, that in the circumstances of this case Bryant’s remonstrances did not constitute an effective repudiation or disavowal of the actions taken on his behalf. First, Bryant’s good faith in requesting supporters to stop restraining or coercing employees in the exercise of their Section 7 right to question the wisdom of their representative is belied by his own

concurrent unlawful behavior. It is important to note that Bryant’s own repeated violations of Section 8(b)(1)(A) were known to both Hamilton and Roldan and to their victims.

Secondly, the specificity of the threats in question here intensified with respect to their references to violence over the period from March 15 to April 18. Moreover, Roldan and Hamilton couched their last two threats, on April 7 and 18, in terms of “we,” even including a reference to the International as a possible source of the violence. Bryant’s two supporters thus reasonably conveyed the impression that they spoke of union-sponsored action against the dissidents, as opposed to simply their individual efforts alone.

In sum, Bryant, knowing that the misconduct in question was occurring, failed, in the presence of the victimized union officials, either to discipline his followers or to make any serious effort to prevent them from continuing to engage in such conduct. This failure amounted to a condonation of Hamilton’s and Roldan’s actions and gave the dissident officials a reasonable basis for believing that the stewards had the apparent authority to make the threats in question. Accordingly, we find that by so failing to make any serious effort to prevent or repudiate the threats of March 20 and 30, April 7 and 18, 1989, the Respondent Union violated Section 8(b)(1)(A). *East Texas Motor Freight*, 262 NLRB 868, 870–871 (1982), and *Mine Workers District 30 (TCH Coal)*, 278 NLRB 309 (1986).

AMENDED CONCLUSIONS OF LAW

1. At all pertinent times, Pacific Bell was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and Local 9431 was a labor organization within the meaning of Section 2(5) of the Act.

2. At all pertinent times Local 9431’s president, Bryant, possessed general agency powers to act on behalf of Local 9431.

3. Local 9431 violated Section 8(b)(1)(A) of the Act by:

a. Bryant’s December 20, 1988 and March 15 and 21, 1989 threats of retaliation within Local 9431 against dissident Dadisman and within Local 9431 and Pacific Bell against dissidents Gilbert, Stoker, and Watkins because of their opposition to his actions, conduct, and policies and their efforts to remove him from office.

b. Bryant’s March 21, 1989 retaliation against Gilbert, Stoker, and Watkins (revocation of their discretionary use of UA time) because of their opposition to his actions, conduct, and policies and their efforts to remove him from office;

c. Bryant’s and his supporters’ April 18 retaliation against Stoker (withdrawal of his grievance) because of

⁶Stoker had placed himself in a nonworking area of a Pacific Bell facility, and during his and their nonworking time solicited employees who were union members to sign a petition to recall Bryant. When representatives of Pacific Bell learned what he was doing, they ordered him off the premises.

his opposition to Bryant's actions, conduct, and policies and his efforts to remove Bryant from office.

d. Failing to make reasonable efforts and take reasonable steps to repudiate and prevent threats of bodily harm made by area representatives Hamilton and Roldan against Dadisman, Gilbert, Stoker, and Watkins because of their opposition to Bryant's actions, conduct, and policies and their efforts to remove him from office.

4. The above-unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 9431, Communications Workers of America, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraph.

“(d) Failing to make reasonable efforts and take reasonable steps to protect employees who are members of Local 9431 from threats of bodily harm made by Local 9431's area representatives because of the employees' opposition to actions, conduct, and policies of Local 9431's officers.”

2. Insert the following as paragraph 2(e) and reletter the subsequent paragraphs.

“(e) Permit Stoker to be represented by his own counsel at the remaining stages of the grievance procedure and at the arbitration proceeding, and pay the reasonable legal fees of such counsel.”

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to take adverse actions against employees who are members of Local 9431, Communications Workers of America, AFL-CIO, affecting their status within Local 9431 or their employment because they oppose actions, conduct, or policies of President Bryant or any other officer or because they seek his or their removal from office.

WE WILL NOT remove the discretionary authority of officers or representatives of Local 9431 to take time off from work to attend meetings on behalf of our

members or to take courses in improving their ability to represent our members or for similar purposes and to secure reimbursement for their resulting lost wages because of such opposition or removal efforts.

WE WILL NOT withdraw or refuse to process to resolution on their merits grievances filed by employees represented by Local 9431 because of such opposition or removal efforts.

WE WILL NOT fail to make reasonable efforts, and to take reasonable steps, to protect employees who are our members from threats of bodily harm made by our area representatives because of those employees' opposition to actions, conduct, and policies of our officers.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL advise Glenn Dadisman, Donald Gilbert, J. Rodman Stoker, and Michael Watkins, in writing, that no adverse actions will be taken against them affecting their status within Local 9431 or their employment because of their opposition to actions, conduct, or policies of President Bryant and their efforts to remove him from office.

WE WILL rescind, in writing, an order issued by President Bryant requiring Gilbert, Stoker, Watkins, and officers other than Treasurer Ralph James to secure his approval and permission prior to taking time off to attend committee meetings, training courses, and other activities for the benefit of the members of Local 9431 or to improve their ability to represent those members' interests and WE WILL advise Pacific Bell in writing that those officers may take such time off at their discretion.

WE WILL process on their merits grievances of employees who oppose actions, conduct, or policies of our officers or who oppose their holding office or seek their removal from office.

WE WILL process with Pacific Bell on its merits Stoker's grievance over Pacific Bell's refusal to permit Stoker to solicit signatures of Pacific Bell employees to a petition for Bryant's recall from office in a non-working area during Stoker's and the employees' non-working time unless Stoker and the General Counsel of the National Labor Relations Board are satisfied the terms of the settlement of a complaint against Pacific Bell over that grievance handling is sufficient remedy or, if not, either Local 9431 or Pacific Bell fails or refuses to further process the grievance (in which case the Board shall exercise its jurisdiction to order an appropriate remedy).

WE WILL permit Stoker to be represented by his own counsel at the remaining stages of the grievance procedure and at the arbitration procedure.

WE WILL pay the reasonable legal fees of such counsel.

LOCAL 9431, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Donald R. Rendall, Esq., for the General Counsel.
Mark R. Kruger, Esq. (Mastagni, Holstedt & Chiurazzi), of Sacramento, California, for the Respondent Union.
J. Rodman Stoker, of Marysville, California, appearing on his own behalf.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On March 28 and 29, 1990, I conducted a hearing at Sacramento, California, to try issues raised by a complaint issued on May 31, 1989,¹ based on original and amended charges filed by J. Rodman Stoker, an individual, on April 3, and May 2 and 11.

The complaint alleged, and Local 9431 denied, Local 9431 violated Section 8(b)(1)(A) of the National Labor Relations Act (Act) by Local 9431 President Arvel Clifton Bryant's: December 20, 1988, and March 15 and 21 threatening of employees; plus his March 21 and April 5 issuance and enforcement of an order requiring all but one of Local 9431's officers secure his prior authorization before taking time off during their workshifts at Pacific Bell for the purpose of conducting business on behalf of or for the benefit of Local 9431 and its members employed by Pacific Bell and other employers for which they expected reimbursement from Local 9431 for their lost worktime. The complaint also alleged, and Local 9431 denied, Local 9431 violated the same section of the Act by Local 9431 Area Representative Rodney Hamilton's March 20 and 30 and April 18 threatening of employees and by Local 9431 Area Representative David Roldan's April 7 threatening of employees. The complaint further alleged, and Local 9431 denied, Local 9431 violated the same section of the Act by withdrawing a grievance filed by Stoker alleging Pacific Bell violated a collective-bargaining agreement between Local 9431 and Pacific Bell by denying Stoker access to Pacific Bell's premises during nonworking time in nonworking areas to solicit Pacific Bell employees who were members of Local 9431 to sign a petition calling for the recall of Bryant as president of Local 9431. Lastly, the complaint alleged, and Local 9431 denied, at times pertinent that Hamilton and Roldan were agents of Local 9431 acting on its behalf.

The issues for resolution are whether:

1. Hamilton and Roldan committed the acts alleged above and Local 9431 thereby violated the Act;
2. Bryant committed the acts alleged above and Local 9431 thereby violated the Act; and
3. Local 9431 violated the Act by withdrawing the Stoker grievance.

Counsel for the General Counsel, counsel for Local 9431, and Stoker were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file

briefs. Counsel for the General Counsel and counsel for Local 9431 filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following

FINDINGS OF FACT²

A. Facts

1. Background

In 1986 representatives of Communications Workers of America, AFL-CIO (the International) and Pacific Bell executed a collective-bargaining agreement expiring August 9, 1989, wherein Pacific Bell recognized the International as the exclusive collective-bargaining representative of Pacific Bell employees in job classifications set out in the agreement, including employees at Pacific Bell's Auburn and Yuba City facilities. The day-to-day administration of that agreement was conducted by members of Local 9431 either elected as officers of Local 9431 or appointed by those officers to represent its members in dealing with their employers.³

At times relevant to this proceeding the elected officers of Local 9431 were President Bryant, Vice President Michael Watkins, Treasurer Ralph James, Secretary Dorothy Mascuch, Area Directors Glenn Dadisman, Donald Gilbert, Peggy Noonan, Stoker, and an unidentified fifth area director. The nine constituted Local 9431's executive board. An unknown number of area representatives (shop stewards) assisted the area directors in administering the agreement within the areas each of the directors serviced. Local 9431 had approximately 364 members.

By late 1988, considerable friction had developed between President Bryant and four executive board members—Vice President Watkins and Area Directors Dadisman, Gilbert, and Stoker—and by December had peaked over Bryant's planned reduction in Dadisman's hours to 4 hours per week⁴ and layoff of office clerical Dora Tighe.

The four dissidents opposed Dadisman's hours reduction⁵ and the layoff. Those proposed actions were scheduled for consideration at the executive board's December 20, 1988 meeting.

Dadisman did not attend the executive board meeting, since he met with Bryant to discuss his future employment terms prior the meeting,⁶ those terms were scheduled for consideration at the meeting, and he undoubtedly concluded it would be improper for him to attend and cast a possible vote on the subject due to his personal involvement.

² While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based upon my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore any testimony in the record which is inconsistent with my findings is hereby discredited.

³ The International also had collective-bargaining agreements with employers other than Pacific Bell and employees of those employers were also served by Local 9431's elected officers and appointed representatives.

⁴ Dadisman retired from employment by Pacific Bell and was employed by Local 9431 to service members of Local 9431 covered by agreements with non-Bell employers. He was paid the difference between the value per hour of his pension income and the rate for the classification he held at Pacific Bell prior to his retirement.

⁵ Watkins characterized the hours reduction as tantamount to a discharge.

⁶ Watkins sought to attend that meeting but Bryant denied his request to attend.

¹ Read 1989 after further date references omitting the year.

The hours reduction and layoff issues became a nullity when, at the meeting, Bryant announced he and Dadisman worked out a mutually agreeable settlement of Dadisman's employment terms⁷ and he decided not to lay off Tighe.

2. The alleged December 20, 1988 Bryant threat

After the Board meeting ended, Bryant was unable to start his car. Since his home was close to Bryant's residence, Watkins offered and Bryant accepted a ride home in Watkins' auto. In the course of the ride: Watkins questioned Bryant's receiving reimbursement from Local funds for the mileage he traveled between his home and office (commuter costs); Bryant stated Local 9431's books and records had been audited and no improper charges found; and Bryant stated he was giving consideration to ways of "doing in" Watkins and his fellow dissidents for opposing him, both with Pacific Bell and with Local 9431.

3. The alleged March 15 Bryant threat

Friction between Bryant and the four dissidents continued following the December 20, 1988 board meeting and the four met in early March to discuss their future actions. Watkins was of a mind to resign; the other three opposed that idea, suggesting they take their complaints⁸ before the full executive board and see if they could be amicably resolved and, failing that, taking more drastic action.

With that program in view, Watkins contacted the International's representative serving their local, Walter Kimball, and requested his presence at an executive board meeting scheduled for March 20. Kimball agreed to attend and the meeting was scheduled.

Five days prior to the meeting (on March 15), Bryant left his office and drove to the facility where Watkins was employed. He sought out Watkins and read to him a statement he drafted in his office before going to see Watkins. The statement read:

I want you to know that I know what you are planning on doing. By trying to destroy me personally and not resolve the issues between us only leads this Local down a destructive path that will cause it to end up in receivership. You're failing to work towards cohesiveness and that upsets me. My intent is to fight you every step of the way *and win*. My concern is for the membership and I won't be alone in my battle. I already have the national union support and I will have outside help too. I will file slander and defamation suits. I am urging you, one final time, to reconsider your position and drop this useless attempt of yours to discredit me.

Watkins responded a meeting had already been scheduled for March 20 attended by a representative of the International to air the complaints the four had about the way Bryant was

conducting affairs of the Union in an effort to resolve the issues between Bryant and the four dissidents.

4. The alleged March 20 Hamilton threats

Pursuant to Watkins' previous arrangements, Local 9431's executive board convened on March 20, with Kimball in attendance. Dadisman was present at the beginning of the meeting but left shortly after it started, to attend to other business. A number of Local 9431 members, including Hamilton, also attended the meeting.⁹

Bryant called the meeting to order and turned the chair over to Watkins. Watkins, Gilbert, and Stoker asked questions of Bryant concerning reports:

1. Bryant accepted a gold watch from an employer who had collective-bargaining relations with Local 9431;

2. Bryant was billing and receiving reimbursement from Local 9431 for his commuting expenses between his home and Local 9431's office;

3. Bryant had authorized the payment of \$600 in Local 9431 funds to a member without prior consideration and authorization of the executive board; and

4. Bryant sexually harassed a female office clerical employee by Local 9431.

Bryant conceded his acceptance of the watch, billing and receipt of reimbursement for commuting expenses, and authorization of a \$600 payment to a member suffering financial distress without prior consideration and authorization by the executive board. He contended none of those actions were improper and an abuse of his office. He categorically denied the sexual harassment report.

On completion of Bryant's responses to the questions, a general discussion took place with members present participating. The dissidents contended Bryant's actions set out in (1) through (3) above were improper, an abuse of his office, and proposed he resign his office. Bryant refused to resign. Several members in attendance disputed the dissidents' claims, including Hamilton, who stated he was tired of hearing the dissidents' complaints against Bryant, they were disrupting the Union, and there must be ways to "take care" of them once and for all. Hamilton subsided, however, when Bryant told him to watch his language.

After hearing the questions, answers, and discussion, Kimball stated a local union officer's acceptance of gifts of the type in question was not improper conduct, in fact he received such gifts; a local union officer's receipt of reimbursement for commuting expenses, in conformity with past practice, also was not improper conduct; and a local union president's authorization of distress payments without prior clearance by the local union's executive board was not improper conduct.

Following the close of the meeting, Hamilton approached Gilbert and asked Gilbert why he had not furnished some information he previously requested, Gilbert was in trouble if he didn't furnish it. Gilbert replied to watch it, he didn't know what Hamilton was talking about. Hamilton then bumped Gilbert, saying he was having problems with Gilbert, Gilbert was an (expletive) and better watch his back.

⁷Watkins testified without contradiction Dadisman later informed him the two did not so agree.

⁸Their complaints at that time were: (1) Bryant's acceptance as a gift of a gold watch from an employer with whom Local 9431 had collective-bargaining relations; (2) Bryant's receipt of reimbursements from Local 9431 funds for his commuter expenses between his home and office; (3) Bryant's payout of \$600 in Local 9431 funds to a member without any authorization or consideration by the executive board prior to the payment; and (4) reports of Bryant's alleged sexual harassment of staff.

⁹Local 9431's executive board meetings were open meetings. The issue of whether Hamilton was an agent of Local 9431 acting on its behalf within the meaning of Sec. 2 of the Act with respect to actions and statements by him at the March 20 and other meetings shall be resolved in a later section of this decision.

5. The alleged March 21 Bryant threat

Following the close of the March 20 executive board meeting, Watkins, Dadisman, and Stoker prepared petitions stating Bryant's admitted receipt of reimbursement for his commuting costs and authorization for a \$600 distress payment constituted a misappropriation of Local 9431's funds and his admitted receipt of the gold watch from an employer with whom Local 9431 had collective-bargaining relations was improper, warranting the scheduling of an election to recall Bryant from his office as president. The petitions noted such an election would result upon 20 percent of the members signing the petition.

The following morning the four dissidents toured locations where Local 9431 members were employed and solicited its members at each location to sign the petition.¹⁰

Following his solicitations at an Auburn facility of Pacific Bell prior to the commencement of the dayshift, Gilbert went to the coffee room within the plant to secure a cup of coffee. He saw Bryant in the room engaged in conversation with Local 9431 Treasurer James and employee Donna Stillman. On seeing Gilbert, Bryant gestured toward him and stated these (expletive) don't know what they are doing, they are going beyond bounds and he was going to get them any way he could.

6. The alleged March 21 retaliation against the dissidents

A meeting of the membership of Local 9431 was held the evening of March 21. It was chaired by Bryant. Watkins, Mascuch, Gilbert, Stoker, Hamilton, Kimball, approximately 50 members, and other representatives attended.

Bryant read a document into the record and handed it to Mascuch.

The document stated:

Effective immediately I am no longer approving UA time¹¹ to be taken by any of the officers in this Local without my advance approval. I am officially notifying the Company that additionally no officer other than Ralph James is authorized by this Local to represent this Local in any BLP context including CIF's and their associated committees.

On April 5 Bryant addressed a letter to Pacific Bell stating:

Effective immediately I am no longer approving UA time to be taken by any of the officers in this Local without my advance approval. I am officially notifying the Company that additionally no officer other than Ralph James is authorized by the Local to represent this Local in any BLP context, including CIF's and their associated committees.

¹⁰ They secured the requisite number of signatures and Stoker delivered the petitions to Mascuch for processing.

¹¹ UA time was time taken off from their workshifts at Pacific Bell by Local 9431 officers to conduct Local 9431 business. Other than direct dealings with Pacific Bell representatives, Local 9431 officers were reimbursed by Local 9431 for UA time and Pacific Bell reimbursed them for time spent in direct dealing (UP time).

Prior to Bryant's issuance of the March 21 directive, Local 9431's officers took UA time off from work on their own recognizance.

Following Pacific Bell's receipt of the April 5 communication, the four dissidents were informed by their supervisors they would not be released from work on UA time until and unless those supervisors received word from Bryant their use of such time had been approved by him. Prior to that time, the dissidents simply informed their supervisors they were taking UA time off from work and were released without question.

The preapproval requirement presented potential problems for the area directors, particularly Stoker,¹² since Bryant oftentimes was not readily available to grant their requests for his approval of their use of UA time and the time it took to secure and relay such approval to Pacific Bell created unavoidable delays and difficulties.

Bryant attempted to justify his directive on the grounds UA reimbursements to officers had been excessive and endangered Local 9431's financial situation. No evidence was produced, however, establishing any abuse of the use of UA time prior to his issuance of the directive and he conceded the amount of money expended on UA reimbursement was no less subsequent to his issuance of the directive than the amounts expended prior to its issuance.

7. The alleged March 30 Hamilton threat

On March 30 Kimball appeared at a meeting to address a number of Local 9431's area representatives (job stewards).¹³ Bryant opened the meeting, introduced Kimball, and asked Watkins, Gilbert and Stoker to leave the meeting with him, on the ground the meeting was a private meeting with Kimball requested by the stewards. Watkins, Gilbert, and Stoker refused to leave and Bryant departed alone.

Kimball explained the provisions of the constitution of the International relating to the recall of local union officers and also, in response to questions, explained the constitutional provisions governing the International's imposition of receiverships on its affiliated local unions.¹⁴

During the meeting Area Representative David Roldan asked Kimball why they had to go through all this and Hamilton followed with the statement the dissension could be settled fast by bringing in a couple of guys to do away with these troublemakers, referring to Watkins, Gilbert and Stoker.¹⁵ While Kimball grimaced on hearing Hamilton's statement, he made no comment.

¹² Stoker serviced Local 9431 members who were not employed by Pacific Bell. Since he was employed by Pacific Bell, it was necessary for him to utilize UA time to render such services.

¹³ Bryant scheduled the meeting so Kimball could advise the stewards concerning those provisions of the International's constitution governing the recall of affiliated local union's officers.

¹⁴ Bryant previously voiced fears the International would place Local 9431 in receivership if political dissension among Local 9431's officers interfered with its operations.

¹⁵ Hamilton did not corroborate the testimony of Watkins and Stoker to his use of the language just quoted but said he commented it would be cheaper to go out and hire someone to do away with these guys, referring to Watkins, Gilbert, and Stoker, a distinction without a difference—in the sense either comment constituted a threat of bodily harm.

8. The alleged April 7 Roldan threat

On April 7, Bryant, Gilbert, and Roldan met with Pacific Bell Representatives Michael Huer and William Bierbaum to discuss some grievances.

Before the parties began discussing the grievances, Bryant handed Roldan several folders containing documents and said "this is the NLRB [expletive] these guys are using against me." Roldan glanced through the contents of the folders and said "this is [expletive], lies, [expletive]," threw the folders onto the table and said "why can't we just hire assassins, CWA (the International) must have some we can hire to take care of these guys, it will probably cost \$50 or maybe we can get a volunteer and get it done free," looking at Gilbert while he spoke.¹⁶ Bryant told Roldan not to talk like that and the four began to discuss the grievance.

9. The alleged unlawful April 18 withdrawal of the Stoker grievance

As noted heretofore, on July 21 the four dissidents visited various facilities of Pacific Bell to solicit the signatures of Local 9431 members to petitions calling for an election to recall Bryant as president of Local 9431. In pursuing that objective, Stoker placed himself in a nonworking area in one of Pacific Bell's facilities and, during his and their nonworking time, solicited employees at that facility who were members of Local 9431 to sign a recall petition. Representatives of Pacific Bell, on learning what he was doing, ordered him off the premises.

Stoker prepared a written grievance alleging by its foregoing action Pacific Bell violated the nondiscrimination provisions of the collective-bargaining agreement between the International and Pacific Bell. On April 17, Watkins and Stoker processed the grievance through the first step of the grievance procedure of the agreement with Pacific Bell Representatives Judy Finn and Ron Anderson, who denied the grievance on the ground Local 9431 representatives were not entitled to access to its premises for the purpose of soliciting the recall of an officer of Local 9431.

Bryant subsequently told Stoker he did not intend to process the grievance any further and advised several of his supporters the grievance could be stopped if they got a motion passed to withdraw the grievance.

The following day (April 18), at a regular meeting of Local 9431's membership, Hamilton made a duly seconded motion directing Bryant to withdraw the grievance.¹⁷

Prior to its passage, Bryant characterized Stoker as incompetent, unstable, and unqualified for the office he held.

10. The alleged April 18 Hamilton threat

In the course of the meeting: Gilbert stated threatening the lives of officials because of disagreement with them politically was no way to run a union, Hamilton commented "let's get a rope and hang these guys" and Bryant threatened to eject Hamilton from the meeting if he didn't curtail his language.

¹⁶ As in the case of Hamilton, whether Roldan was an agent of Local 9431 acting on its behalf within the meaning of Sec. 2 of the Act when he made the statements just described shall be resolved later in this decision.

¹⁷ Hamilton was unable to word his motion in proper form until Bryant assisted him in wording it. He also advised Hamilton prior to the meeting how to present the motion.

11. The status of Hamilton and Roldan

Documentary and testimonial evidence established at the times Hamilton and Roldan uttered the statements attributed to them, they were duly designated area representatives (job stewards) for Local 9431. Their duties as stewards were to sign up as Local 9431 members employees of Pacific Bell in plant areas they were designated to serve who had not yet joined Local 9431, to act as information conduits between Local 9431 members in their areas and Local 9431, to counsel Local 9431 members in their areas concerning the merits of their complaints and grievances, to represent those members' interests in meeting with representatives of Pacific Bell to resolve them, and to ensure Pacific Bell's compliance with the terms of the agreement within their areas.

B. Analysis and Conclusions

1. Preliminary

The foregoing factual recitation establishes at times pertinent Local 9431's executive board was deeply split, with executive board members and Local 9431 Officers Dadisman, Gilbert, Stoker (area directors), and Watkins (vice president) objecting to actions and policies instituted or taken by Executive Board Member Bryant (president) and, failing by internal measures to achieve any changes in those actions and policies, seeking the recall and removal of Bryant from office, and Bryant (plus his followers) taking retaliatory action against the four dissidents because of their objections and efforts to remove Bryant from office.

Section 7 of the Act grants employees the right to assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in activities for their mutual aid and protections, and to refrain from such activities.

For many years the Board (and reviewing courts) have consistently ruled voicing by an employee/union member of objections to actions or policies instituted or taken by a union officer and his efforts to remove or replace a union officer fall within the employee's Section 7 rights and therefore any restraint or coercion directed against that employee for such objections or efforts violate Section 8(b)(1)(A) of the Act.¹⁸

2. The alleged Bryant threats

Findings have been entered on December 20, 1989, Bryant told Watkins he was giving consideration to ways of "doing in" the dissidents both with their employer and with Local 9431 because of their objections to several of his actions and

¹⁸ *Textile Workers Local 69*, 91 NLRB 1010 (1950); *Operating Engineers Local 188*, 118 NLRB 669 (1957); *Teamsters Local 6*, 128 NLRB 294 (1960); *Electrical Workers Local 485*, 170 NLRB 1234 (1968); *Teamsters Local 923*, 172 NLRB 2137 (1968); *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832 (1977), *enfd.* 589 F.2d 1116 (D.C. Cir. 1978); *Steelworkers Local 1397*, 240 NLRB 844 (1979); *Boilermakers Local 5 (Regor Construction Co.)*, 249 NLRB 840 (1980); *Highway City & Airport Drivers Local 600 (Commercial Lovelace)*, 250 NLRB 1127 (1980); *Laborers Local 496 (Newport News)*, 258 NLRB 1105 (1981); *Furniture Workers Local 1010*, 261 NLRB 524 (1982); *Detroit Plaza Hotel*, 267 NLRB 1030 (1983); *Terpening Drivers Assn.*, 271 NLRB 96 (1984); *General Motors Corp.*, 272 NLRB 705 (1984), *enfd.* 776 F.2d 1310 (6th Cir. 1985); *Machinists Lodge 707*, 276 NLRB 985 (1985); *Laborers Local 158*, 280 NLRB 1100 (1986); *Graphic Communications Workers Local 388*, 287 NLRB 1128 (1988); *Toledo World Terminals*, 289 NLRB 670 (1988).

policies; on March 15 Bryant told Watkins he was going to sue the dissidents unless they ceased their opposition to his actions and policies; and on March 21 Bryant gestured towards Gilbert in the presence of Pacific Bell employees, stated the dissidents had gone “beyond bounds” in seeking the signatures of Pacific Bell employees to a petition for his recall from office and he was going to “get” them any way he could.

At the times Bryant made the comments just described dissident Dadisman was an employee of Local 9431 and a member/officer/executive board member of Local 9431, and Gilbert, Stoker, and Watkins were Pacific Bell employees and members/officers/executive board members of Local 9431.

It is undisputed at the time he made those comments Bryant was a general agent of Local 9431¹⁹ whose office enabled him to institute actions or policies affecting the dissidents’ membership/administration of office status within Local 9431 and their employment/representation of employee status.²⁰

I find by all three comments Bryant communicated threats to institute or take actions or policies detrimentally affecting the dissidents’ status within Local 9431 and their status as employees because of their objections to his actions and policies and their sponsoring of a drive to recall and remove him from office.

The Board (and reviewing courts) have held on numerous occasions such threats chill and constrain employee exercise of Section 7 rights and violate the Act. See, for example, *Toledo World Terminals*, *ibid.* (threat to seek discharge and refuse to process grievance of employee/member for soliciting other employees/members to sign a petition seeking an investigation into alleged irregularities in the election of the union’s president and his removal from office); *Graphic Communications Workers Local 388*, *ibid.* (threat to refuse to process the grievance of an employee/member because he prepared and circulated a petition challenging the election of the union’s grievance committeemen); *Laborers Local 158*, *ibid.* (threat to prevent the referral of employees/union members because either they were candidates for or supported candidates for election to union office, displacing incumbent union officers); *Detroit Plaza Hotel*, *ibid.* (threatening to withhold any union assistance to a member/employee because he distributed a leaflet to other employees/members urging a “No” vote on a dues increase sought by union officers); *Furniture Workers Local 1010*, *ibid.* (threatening to seek discharge and to refuse to process the grievance of an employee/member because he objected to a union officer’s signing of a collective-bargaining agreement with his employer without prior review and approval of its terms by the affected employees/members); *Highway City & Airport Drivers*, *ibid.* (threat to “get” an employee/member because he distributed literature to other employees/members opposing a dues increase supported by the union’s officers); *Boilermakers Local 5*, *ibid.* (threat to seek discharge and to refuse to process the grievance of an employee/member because he supported the opponent to an incumbent union president seeking reelection); *Steelworkers Local 1397*, *ibid.* (threaten-

ing to seek discharge and to refuse to process the grievance of an employee/member because he was affiliated with a group of dissident employees/members who distributed a document criticizing the actions and policies of a union officer); *Teamsters Local 886*, *ibid.* (threatening to seek discharge and to refuse to process employee/member’s grievance because he circulated a petition to investigate alleged irregularities in the reelection of the union’s president and set aside the election).

On the basis of the foregoing, I find and conclude by Bryant’s utterance of the three threats to employees described above, Local 9431 violated Section 8(b)(1)(A) of the Act.

3. The alleged Hamilton and Roldan threats

Factual findings have been entered on March 20 Hamilton, in the presence of other employees/Local 9431 members/- officers, stated the dissidents were disrupting Local 9431 by their opposition to Bryant and there must be ways to “take care” of them; on the same date, he bumped dissident Gilbert, said he was having problems with Gilbert and Gilbert better watch his back because of Gilbert’s opposition to Bryant; on March 30, in the presence of other employees/Local 9431 members/stewards, he stated the dissension caused by the dissidents’ opposition to Bryant and efforts to remove Bryant from office could be taken care of by bringing in a couple of guys to “do away with” the dissidents; on April 7 Roldan, in the presence of two Pacific Bell representatives and employees, said “why can’t we just hire assassins, CWA must have some we can hire to take care of the dissidents, it will probably cost \$50 or maybe we can get a volunteer and get it done free”; and on April 18 Hamilton, in the presence of employees/Local 9431 members and officers, stated “let’s get a rope and hang the dissidents.”

Each of these incidents constitute a threat to inflict bodily harm on the dissident employees/Local 9431 members/officers because of their opposition to Bryant and efforts to remove him from office.

Threats of bodily harm addressed to employees because of their opposition to an incumbent union officer and efforts to remove him from office are violative of Section 8(b)(1)(A) of the Act, as they chill and restrain the threatened employees’ exercise of Section 7 rights, *provided they are uttered by an agent of a union with actual, apparent or implied authority to speak or act on behalf of that union in uttering them.*

The Board (and reviewing courts) have had no difficulty attributing such threats to a union when uttered by: (1) a field agent (*Operating Engineers Local 295*, 282 NLRB 273 (1986)); (2) a business representative (*Carpenters (Reeves, Inc.)*, 281 NLRB 493 (1985), *Electrical Workers Local 1547*, 225 NLRB 331 (1976), *Plumbers Local 121*, 223 NLRB 1250 (1976), *Pottery Workers (Homer Laughlin China)*, 217 NLRB 25 (1975)); (3) a president (*Highway City & Airport Drivers*, *ibid.*); or (4) an executive board member (*Electrical Workers Local 453*, *ibid.*).

Have readily attributed such threats to a union when uttered by a union steward *when the actions threatened by the union steward* (to cause discharge and to refuse to process the resulting grievance) *were within powers and duties con-*

¹⁹In its answer to the complaint Local 9431 admitted Bryant was an agent of Local 9431 acting on its behalf within the meaning of Sec. 2 of the Act.

²⁰Evidenced by his reduction in Dadisman’s hours of employment, his restriction of the use of UA time by Gilbert, Stoker, and Watkins, etc.

ferred on him by the union, as an exercise of apparent authority.²¹

And refused to attribute such threats to a union when uttered by: (1) an in-plant organizer (*Kux Mfg. Co.*, 291 NLRB No. 60 (1988), upheld 890 F.2d 804 (6th Cir. 1990); *Amalgamated Clothing Workers*, 264 NLRB No. 14, upheld 736 F.2d 1559 (D.C. Cir. 1984); *Pierce Corp.*, 288 NLRB 97 (1988); *United Steelworkers*, 256 NLRB 1135 (1981)); or (2) a union supporter (*United Builders Supply Co.*, 287 NLRB 1364 (1988); *Duralam, Inc.*, 284 NLRB 1419 (1987); *Teamsters Locals 639 & 730*, 281 NLRB No. 1 (1986), upheld 826 F.2d 287 (4th Cir. 1987); *Tuf-Flex Glass*, 265 NLRB No. 101 (1982), upheld 715 F.2d 291 (7th Cir. 1983)).

The agency powers conferred on Hamilton and Roldan by virtue of their status as Local 9431 stewards were limited to acting as information conduits between Local 9431 and the employees within their service areas represented by Local 9431; signing up employees in those areas as members of Local 9431; counseling employees within their areas who were members of Local 9431 concerning on-the-job complaints and grievances; representing those employees in adjusting their complaints and grievances with lower level management; and policing the collective-bargaining agreement between Pacific Bell and Local 9431.

There is no evidence Local 9431 authorized Hamilton and Roldan to threaten dissident employees/Local 9431 members with bodily harm because they opposed actions, conduct and policies of Local 9431 President Bryant and sought his removal from office. Thus it is clear Local 9431 never gave Hamilton or Roldan actual or apparent authority to threaten the four dissident employees with bodily harm for such opposition and effort.

The sole, remaining question is whether the Hamilton-Roldan threats may be attributed to Local 9431 on the basis of implied authority to utter their threats against the four dissidents. As the Ninth Circuit Court has stated, such authority may be implied only where evidence establishes a union "instigated, authorized, solicited, ratified, condoned or adopted" actions or statements of its members or supporters.²²

The evidence fails to establish Local 9431 instigated, authorized, solicited, ratified, condoned or adopted the Hamilton-Roldan threats. It rather appears those threats were spontaneous outbursts by two of Bryant's fervent supporters and that, where Bryant was present and able to counter, Bryant instructed Hamilton and Roldan to cease and refrain from such utterance.

On the basis of the foregoing, I find and conclude the threats made by Hamilton and Roldan described above are not attributable to Local 9431 and therefore Local 9431 did not violate the Act by their utterance.

4. The alleged retaliations

On March 21, the day after the dissidents aired their complaints against Bryant before a special meeting of Local 9431's executive board and the same day the dissidents cir-

culated their petition seeking his removal from office, Bryant issued an order requiring all officers other than one of his supporters (Treasurer James) secure his permission and approval before taking any time off from their jobs for activities on behalf of Local 9431²³ where their lost wages were reimbursable by Local 9431, followed by the issuance of an instruction to Pacific Bell not to release those officers from work for other than processing the grievances of Pacific Bell employees represented by Local 9431 without prior receipt of his approval for such release.

This order and instruction had the immediate and future effect of restricting the taking of time off from work compensated by Local 9431 by dissidents Gilbert, Stoker, and Watkins to activities and attendance at Bryant's discretion, a complete reversal of previous practice.²⁴

In the normal course of events, problems and situations affecting members of Local 9431 within the areas serviced by the three dissidents arose which did not involve grievance processing but nevertheless affected Local 9431's members and required the immediate taking of time off from work by the three dissidents without compensation by Pacific Bell, particularly in Stoker's case (while employed by Pacific Bell, he serviced Local 9431 members employed by AT&T, including grievance processing, and had to take such time whenever called to such service), and Bryant was frequently not readily available (due to his travels and absences from the office). The necessity for Bryant's approval also gave Bryant a means for withholding permission for the dissidents' attendance at meetings and courses they thought desirable because he resented their opposition to his actions, conduct, and policies and their seeking his removal from office.

Bryant also launched measures designed to prevent a resolution on its merits of Stoker's grievance over Stoker's ejection from Pacific Bell premises for attempting, in a nonworking area during his and other Pacific Bell's employees' nonworking time, to secure signatures of those employees to a petition for the recall of Bryant from office. First, by Bryant's statement to Stoker (by Bryant's own admission) Stoker's grievance was not going to be processed beyond the first step of the grievance/arbitration procedure of the Pacific Bell/International collective-bargaining agreement to which Watkins and Stoker had taken it; second, by Bryant advising his followers the grievance could be stopped by their moving for membership approval of its withdrawal; third, by Bryant's personal and vituperative attack of Stoker's personality, character and competence from the podium²⁵ prior to membership consideration of such a motion; fourth, by Bryant coaching and shepherding of such a motion by his fervid follower Hamilton to a vote for withdrawal of the Stoker grievance with little regard to its merits; and fifth, by Bryant utilizing that membership action to withdraw the Stoker grievance, thereby preventing its resolution on its merits.

The timing and effect of the actions just described identifies them as retaliations against the dissidents by Bryant through Bryant's exercise of powers provided to him by his office and direction of his followers and supporters within

²¹ *Detroit Plaza Hotel*, *ibid.*; *Toledo World Terminals*, *ibid.*; *Highway City & Airport Drivers*, *ibid.*; *Boilermakers Local 5*, *ibid.*; *Teamsters Local 886*, *ibid.*

²² *NLRB v. Miramar of California*, 601 F.2d 422, 425 (9th Cir. 1982), affirming 233 NLRB 1009 (1977). Also see *Kux Mfg. Co. v. NLRB*, 890 F.2d 804 (6th Cir. 1990), affg. 291 NLRB No. 60 (Oct. 20, 1988) (not reported in Board volumes), and *East Texas Motor Freight*, 262 NLRB 868 (1982).

²³ Attending Local 9431 committee meetings, attending training courses to aid their ability to service Local 9431's members; etc.

²⁴ Prior to the issuance of the order and instruction, the three dissidents exercised complete discretion in their use of such time.

²⁵ I credit Gilbert's undisputed testimony to such effect.

Local 9431 because of the dissident's opposition to actions, conduct, and policies by Bryant as Local 9431's president and their attempt to remove him from office.

While a union has broad discretion in the administration of its internal affairs when, as here, its actions are arbitrary, discriminatory, or in bad faith, such actions violate Section 8(b)(1)(A).²⁶

I find and conclude the retaliatory actions against the dissidents described above because of their opposition to Bryant's actions, conduct, and policies and their attempt to remove him from office were arbitrary, discriminatory, in bad faith, and violative of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times Pacific Bell was an employer engaged in commerce in a business affecting commerce and Local 9431 was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times Local 9431 President Bryant possessed general agency powers to act on behalf of Local 9431.

3. At all pertinent times Local 9431 Area Representatives Hamilton and Roldan possessed limited agency powers to act on behalf of Local 9431 and were not acting on its behalf when they threatened dissidents Dadisman, Gilbert, Stoker, and Watkins with bodily harm for their objections to actions, conduct, and policies of Bryant and seeking Bryant's removal from office.

4. Local 9431 violated Section 8(b)(1)(A) of the Act by:

a. Bryant's December 20, 1989, and March 15 and 21 threats of retaliation within Local 9431 against dissident Dadisman and within Local 9431 and Pacific Bell against dissidents Gilbert, Stoker, and Watkins because of their opposition to his actions, conduct, and policies and attempt to remove him from office;

b. Bryant's March 21 retaliation against dissidents Gilbert, Stoker, and Watkins (revocation of their discretionary use of UA time) because of their opposition to his actions, conduct, and policies and effort to remove him from office; and

c. Bryant and his supporters' April 18 retaliation against dissident Stoker (withdrawal of the Stoker grievance) because of his opposition to Bryant's actions, conduct, and policies and effort to remove Bryant from office.

5. The aforesaid unfair labor practices affected and affect interstate commerce as defined in the Act.

THE REMEDY

Having found Local 9431 engaged in unfair labor practices, I recommend Local 9431 be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Having found Local 9431 threatened employees with retaliation in their membership, functions and capacities within Local 9431 and their employment because of their opposition to actions, conduct, and policies of the president of Local 9431 and their efforts to secure his removal from office, I recommend Local 9431 be directed to cease and desist from

making such threats and to assure the threatened employees and all other employees similarly situated they will suffer no retaliation for opposing the actions, conduct, and policies of Local 9431's officers and seeking their removal from office. Having further found one of the acts of retaliation taken against those dissident employees was to take away their discretion to take time off from their employment to engage in activities for the benefit of Local 9431 and its members, I recommend Local 9431 be directed to restore such discretion, subject only to review by appropriate officers of Local 9431 of the legitimacy of their claims for reimbursement for wages lost while engaging in such activities. Having also found one of the acts of retaliation taken against one of those dissident employees was the withdrawal of his grievance and avoidance of its disposition on its merits, I recommend Local 9431 be ordered to process the grievances on their merits of employees who oppose actions, conduct, or policies of its officers or oppose their holding office or seek their removal from office, to process the Stoker grievance through the grievance/arbitration provisions of the collective-bargaining agreement between Local 9431 and the International to a resolution on its merits, unless counsel for the General Counsel and the Charging Party find adequate relief has been furnished by the settlement of companion charges by Stoker against Pacific Bell²⁷ and so advise the Board.²⁸

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁹

ORDER

The Respondent, Local 9431, Communications Workers of America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with retaliation within Local 9431 and their employment because of their opposition to actions, conduct, or policies of Local 9431's officers and attempts to remove such officers from office.

(b) Removing discretionary authority from officers of Local 9431 to take time off from their employment to pursue activities for the benefit of employees/members represented by Local 9431 and seek reimbursement for the wages lost thereby, because of their opposition and efforts just cited.

(c) Withdrawing and refusing to process grievances to resolution on their merits of employees/members because of the opposition and efforts cited above.

(d) In any like or related manner restraining or coercing employees/members in the exercise of their rights under Section 7 of the Act to assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for their mutual aid or protection, and to refrain from all or any of those activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

²⁷ Case 20-CA-22570.

²⁸ In the event such advice is not furnished and time limitations are invoked by either Local 9431 or Pacific Bell to prevent resolution of the Stoker grievance on its merits, I recommend the Board reserve jurisdiction for further consideration and decision of an appropriate remedy.

²⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁶ *Vaca v. Sipes*, 386 U.S. 171 (1967); *General Motors Corp.*, *ibid.*; *Terpening Drivers Assn.*, *ibid.*; *Furniture Workers Local 1010*, *ibid.*; *Plumbers Local 598*, 250 NLRB 75 (1980); *Abilene Area Sheet Metal Contractors*, 236 NLRB 1652 (1978), *enfd.* 619 F.2d 332 (5th Cir. 1980); *Groves-Granite*, 229 NLRB 56 (1977); *Electrical Workers Local 485*, *ibid.*

(a) Advise Dadisman, Gilbert, Stoker, and Watkins in writing no retaliation shall be taken against them either within Local 9431 or their employers because of their opposition to the actions, conduct, and policies of Local 9431 President Bryant and efforts to secure his removal from office.

(b) Rescind in writing the order issued by Bryant requiring Gilbert, Stoker, Watkins, and other officers of Local 9431 other than James to secure advance approval and permission to take time off from work to participate in activities beneficial to other employees and members of Local 9431 and advise Pacific Bell in writing those officers may take such time off at their discretion (subject to review by appropriate officers of Local 9431 of the legitimacy of any subsequent requests by those officers for reimbursement for their lost wages).

(c) Process on their merits grievances by employees who oppose the actions, conduct, or policies of Local 9431's officers or oppose their holding office or seek their removal from office.

(d) Process on its merits the Stoker grievance over Pacific Bell's refusal to permit Stoker to seek signatures of Pacific Bell's employees to a petition for recall of Bryant from his office as president of Local 9431 during his and the employees' nonworking time in nonworking areas, subject to the

conditions, exceptions and reservation of the Board's jurisdiction set out in the remedy.

(e) Post at its facilities in northern California at all locations where notices to its members are customarily posted and at all locations where its members are employed, subject to employer concurrence, copies of the attached notice marked "Appendix."³⁰ Copies of the notice, on forms provided by the Regional Director for Region 20, upon receipt thereof, shall be immediately signed and posted by a duly authorized representative and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members and employees represented by Local 9431 are customarily posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced or covered by other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."